IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1985 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

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NATIONAL INSURANCE COMPANY - Appellant(s)
Versus
LAXMANBHAI MERAMAN KOLI F/O DECD. RAMESHBHAI & 6 - Defendant(s)

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Appearance :
MR DAKSHESH MEHTA for Appellant(s) : 1,
MR CH VORA for Defendant(s) : 1 - 3.
NOTICE SERVED for Defendant(s) : 4 - 7.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1. By way of this appeal, the appellant – Insurance Company has challenged the judgment and award dated 26th April, 2002 passed by the Motor Accident Claims Tribunal, Gandhidham - Kachchh [for short, "the Tribunal"] in Motor Accident Claim Petition No. 383 of 2000 whereby, the said claim petition was partly allowed and opponents no. 2 & 3 in the said claim petition, were held jointly and severally liable to pay an amount of Rs.2,97,500/- [Rupees Two lacs ninety seven thousand five hundred only] by way of compensation along with interest @ 9 % per annum from the date of the petition till the realization of the same.

2.0 The facts in a nutshell are as under ;

2.1 On 07.08.2000, deceased – Rameshbhai Laxmanbhai Koli and respondent no. 1 herein were going to Anjar from Bhimasar in a '*Tempo*' bearing registration No. GJ-12-V-6411. During the course of journey, the Driver of the said vehicle, all of a sudden lost control over it, on account of which the said vehicle turned turtle and the persons traveling therein suffered serious

bodily injuries. As a result of the said accident, the son of respondent no. 1 herein suffered serious bodily injuries and, ultimately, succumbed to it.

2.2 Respondents no. 1 to 5 herein, therefore, filed a claim petition u/s. 166 of the Motor Vehicles Act, 1988 [for short, "the M.V. Act"] before the Motor Accident Claims Tribunal, Gandhidham - Kachchh claiming compensation of Rs.11,00,000/-. During the pendency of the said application, the claimants also filed an application u/s. 163-A of the M.V. Act claiming compensation of Rs.5,86,000/-. Subsequently, the claimants filed an application Exhibit-17 stating that the application preferred u/s. 163-A be treated as a final application, which was granted by the Tribunal.

2.3 It was averred in the claim petition that the Driver of the said vehicle was driving the vehicle in a rash and negligent manner and without observing the traffic rules on account of which he lost control over it and the accident in question took place.

2.4 The Tribunal, after considering the documentary and other evidence on record, partly allowed the said claim petition by

awarding an amount of Rs.2,97,500/- to the claimants by way of compensation along with interest @ 9% per annum from the date of the application till its realization. The appellant – Insurance Company and the Owner of the said Bus were held jointly and severally liable to satisfy the said amount of compensation with interest.

3.0 Mr. Dakshesh Mehta learned Advocate appearing on behalf of appellant – Insurance Company submitted that the claim petition preferred by the claimants u/s. 163-A of the M.V. Act is subject to the provisions contained in the Second Schedule appended thereto. He has submitted that the said Schedule suffers from several defects and, therefore, the Courts / Tribunals cannot use it as a ready reckoner and that it can be used only as a guide. He has, therefore, submitted that the said Schedule is not binding on the Tribunal and, therefore, the same ought not to have been considered while entertaining the application preferred u/s. 163-A of the Act.

3.1 Learned Advocate has relied upon a decision in the case of ***U.P. State Transport Corporation & ors. V/s. Trilok Chandra***

& ors. reported in ***[1996] 4 S.C.C. 362*** wherein it has been observed that the calculation of compensation and the amount worked out in the Second Schedule, suffers from several defects and that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased.

4.0 Learned Advocate for the appellant – Insurance Company has next submitted that the Tribunal has erred in law in assessing the age of the claimant at 21 years and the income at Rs.2,000/- per month in view of the fact that there is nothing on record to substantiate the same. He has submitted that even if it is presumed that the Tribunal has powers to entertain the said application, then also, while awarding compensation u/s. 163-A of the M.V. Act, it has no jurisdiction to award an income more than Rs.40,000/- which is the statutory limit.

4.1 Learned Advocate has relied upon a decision in the case of ***Oriental Insurance Co. Ltd. & anr. V/s. Sushilaben Manubhai Valand & ors.*** reported in ***[2001] 2 G.L.R. 1336*** wherein it has been held that though the person applying or claiming compensation u/s. 163-A of the Act can claim more compensation

but, the Tribunal cannot award compensation beyond what is contemplated and prescribed in the Second Schedule.

4.2 Learned Advocate submitted that in the instant case the Tribunal has awarded compensation which is more than the prescribed statutory limit of Rs.40,000/- and, hence, the impugned award is illegal and improper and deserves to be reduced.

5.0 Learned Advocate for the appellant – Insurance Company further submitted that the application u/s. 163-A of the M.V. Act is maintainable only if the claimant has not filed an application claiming compensation u/s. 166 of the said Act. He has submitted that the claim petitions filed u/s. 163-A and 166 of the M.V. Act are in the nature of alternative remedies and that both the applications cannot be pursued simultaneously.

5.1 Learned Advocate has relied upon a decision in the case of ***Deepal Girishbhai Soni & ors. V/s. United India Insurance Co. Ltd., Baroda*** reported in ***[2004] 5 S.C.C. 385*** wherein it has been held that the remedy for payment of compensation, both under Sections 163-A and 166 being final and independent of each other

as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. A claimant must either opt for a proceeding u/s. 163-A or under Section 166 of the Act, but not under both. The observations made in Paras 42 & 67 of the said decision are relevant, which reads as under;

> "42. Section 163-A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs.40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other facts relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining herself had he been alive. This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.
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> 67. We, therefore, are of the opinion that Kodala has correctly been decided. However, we do not agree with

> the findings in Kodala that if a person invokes provisions of Section 163-A, the annual income of Rs.40,000/- per annum shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act".

6. Learned Advocate for the appellant – Insurance Company next submitted that assuming even if the Tribunal has powers to entertain application u/s. 163-A of the M.V. Act, prima facie, the factors with regard to the age, income, the involvement of the vehicle in question in the alleged accident etc. are not proved beyond reasonable doubt and, therefore, the impugned award passed by the Tribunal cannot be sustained and deserves to be quashed and set aside.

7. Mr. C. H. Vora learned Advocate for the claimants supported the award of the Tribunal and submitted that the Tribunal was completely justified in passing the impugned award. Hence, no interference is required by this Court in this appeal. He has, however, submitted that if the Court is inclined to follow the principle laid down by the Apex Court in *Deepal Girishbhai Soni's*

case (supra), the matter may be remanded to the Tribunal for adjudication afresh.

8. Heard learned counsel for the parties and perused the documents on record. It is not in dispute that the deceased expired on account of the severe bodily injuries sustained by him in the accident in question. The said fact is supported by the F.I.R. filed by the claimants at Exhibit-7/1, the Panchnama of the place of incident at Exhibit-7/2 and the Death Certificate of the deceased at Exhibit-7/3. The said documents clearly go to show that the son of respondent no. 1 expired on account of the said accident. The impugned judgment and award passed by the Tribunal is on an application preferred by the claimant u/s. 163-A of the M.V. Act. The said Section reads as under ;

> "**163-A. Special provisions as to payment of compensation on structured-formula basis**. –
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> (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

> Explanation.- For the purposes of this sub-section, 'permanent disability' shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 [8 of 1923].
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> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
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> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule".

7.1 On a plain reading of the above Section, it is very clear that the said Section provides for special provisions as to the payment of compensation on a structured-formula basis. The legislative intent behind the enactment of the said Section was to provide for the making of an award consisting of a predetermined sum ,without insisting on a long-drawn-out trial or without proof of negligence in causing the accident. The said Section is subject to the Second Schedule appended thereto and provides for the grant of immediate relief to a section of the people whose annual income is not more than Rs.40,000/-.

7.2 Undisputedly, the claimants had also filed an application u/s. 166 of the M.V. Act claiming compensation of Rs.11,00,000/-. However, the claimants filed an application Exhibit-17 before the Tribunal stating that the application u/s. 163-A of the M.V. Act be treated as a final application, which was granted by the Tribunal.

7.3 It is now well settled that for the purpose of interpretation of a statute, the same is to be read in its entirety. The scheme envisaged u/s. 163-A leaves no manner of doubt that by reason thereof, the rights and obligations of the parties are to be determined finally. In view of the principle laid down by the Apex Court in *Deepal Girishbhai Soni's* case (supra), an award made under this Section is in full and final settlement of the claim. The remedy for payment of compensation both u/s. 163-A and u/s. 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. He has, therefore, to choose as to whether a proceeding u/s. 163-A or u/s. 166 is to be filed. Thus, the proceedings u/s. 166 of the M.V. Act shall automatically stand terminated when an award is passed in an application u/s. 163-A.

8.0 Further, by reason of Section 163-A, the compensation is required to be determined by applying the multiplier method, as provided in the Second Schedule. Apart from that factors like, reduction of one-third of the amount in consideration of the expenses which the victim would have incurred towards his maintenance, general damages in case of death as also in the case of injuries / disabilities, disability in non-fatal accidents etc., are required to be considered, which indicate that the amount of compensation so awarded under this Section, is final and not an interim one.

8.1 While assessing the amount of compensation u/s. 163-A, the Tribunal is required to adjudicate upon the disputed question as regards the age and income of the deceased or the victim, as the case may be. In the present case, the Tribunal has assessed the age of the deceased as 21 years. The said finding has been arrived at merely on the basis of the ages of the wife of the deceased and the eldest son at the time of the said accident.

8.2 It is pertinent to note that the claimants have not

produced on record any Certificate of Birth / Document of the deceased issued by any competent Authority under the law in order to prove the age of the deceased. In our opinion, in the absence of any such Certificate / Document referred to hereinabove and keeping in mind the fact that the application preferred by the claimant was one u/s. 163-A of the M.V. Act, the Tribunal ought not to have assessed the age of the deceased on the basis of mere presumption. Proper care is required to be taken while entertaining applications preferred u/s. 163-A since the amount of compensation payable under the said Section is a final one. The said Section also does not contain any provision providing for set-off against a higher compensation unlike Section 140 of the said Act.

9.0 As discussed hereinabove, Section 163-A of the M.V. Act r/w. the Second Schedule appended thereto, provides for the grant of immediate relief to a section of the people whose annual income is not more than Rs.40,000/-. Though a person applying or claiming compensation u/s. 163-A of the Act can claim more compensation than the said amount but, the Tribunal cannot award compensation beyond what is contemplated and prescribed in the Second Schedule.

9.1 In the case on hand, evidently, the Tribunal has assessed the annual income of the victim to be beyond Rs.40,000/- per annum. In our opinion, the Tribunal has committed serious error in law by awarding compensation which is of a higher amount than what is prescribed under Section 163-A r/w. the Second Schedule appended thereto. Here, it is beneficial to note that adequate compensation awarded under this Section is not to be equated with the actual compensation to be awarded in the main claim petition. Of course, the jurisdiction of the Tribunal is widened while deciding the main petition and the Tribunal can take into consideration the actual income of the victim and can proceed to determine the actual compensation payable to the victim. However, in an application u/s. 163-A, the Tribunal cannot award compensation which is more than the prescribed statutory limit.

10. At this juncture, it would be relevant to refer to a decision of the High Court of Karnataka in the case of ***Oriental Insurance Co. Ltd. V/s. N. Kunhappu & ors.*** reported in ***2007 A.C.J. 30*** wherein it has been held that where the claimants' evidence show annual income of more than Rs.40,000/-, then the

case may be remitted back for fresh adjudication.

10.1 In the present case, it appears that the annual income of the deceased is more than Rs.40,000/-, which is the outer limit, as provided in Section 163-A r/w. the Second Schedule appended thereto. Apart from that the documents relied upon by the Tribunal for assessing the age of the deceased also cannot be said to be conclusive. These two factors being relevant for entertaining an application preferred u/s. 163-A of the M.V. Act, in the interest of justice, it would be appropriate to remand the matter back to the Tribunal concerned for adjudication afresh.

11. In view of the above discussion and keeping in mind the principle laid down in *Oriental Insurance Co. Ltd., & Deepal Girishbhai Soni's* cases (supra), we have no hesitation to hold that the judgment and award of the Tribunal is contrary to law and is liable to set aside and the matter is required to be adjudicated afresh.

12.0 In the result, the appeal is partly allowed. The impugned judgment and award dated 26th April, 2002 passed by the

Motor Accident Claims Tribunal, Gandhidham – Kachchh in Motor Accident Claim Petition No. 383 of 2000 is quashed and set aside. The matter is remanded to the Motor Accident Claims Tribunal, Gandhidham - Kachchh for adjudication afresh. This Court has passed the aforesaid order in view of the fact that the Tribunal has not followed the procedure established by law. The amount invested in Fixed Deposit, as directed by this Court, shall be continued in Fixed Deposit and the claimants shall be entitled for the periodical interest on the said Deposit only up to the date of this judgment and order. It is, however, made clear that interest accruing on the said Fixed Deposit shall be accumulated and will be adjusted at the time of the final award. The amount awarded & already withdrawn by the claimant, pursuant to the impugned award, will be adjusted at the time of the final award.

12.1 All the parties concerned shall be at liberty to adduce further evidence, if they so desire. Since the matter is of the year 2000, we observe that either of the parties shall be at liberty to move an application before the Tribunal for early disposal of the case and, if such application is moved, the Tribunal is directed to dispose of the case as expeditiously as possible. It is observed that

this Court has not entered into the merits of the matter and the Tribunal shall consider the same afresh, without being influenced by the fact that this Court has quashed its earlier judgment and award. The appeal stands disposed of accordingly. R & P to be sent to the Tribunal forthwith.

[Anil R. Dave, J.] [K. S. Jhaveri, J.]

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